LEONARD LIM YAW CHIANG

v.

DIRECTOR OF JABATAN PENGANGKUTAN JALAN NEGERI SARAWAK & ANOR

HIGH COURT SABAH & SARAWAK, KUCHING
ABDUL AZIZ RAHIM J
[JUDICIAL REVIEW NO: 8-2007-II]
24 NOVEMBER 2008

ADMINISTRATIVE LAW: *Exercise of administrative powers - Judicial review - Refusal to issue motor vehicle licence - Certiorari and mandamus - Applicant blacklisted by respondents due to an outstanding summons - Whether decision to blacklist applicant and not issue him with licence unreasonable and unlawful - Road Transport Act 1987, ss. 15(1), (4), 17(1)(d) - Federal Constitution, art. 13*

ADMINISTRATIVE LAW: *Remedies - Certiorari and mandamus - Refusal to issue motor vehicle licence - Applicant blacklisted by respondents due to an outstanding summons - Whether decision to blacklist applicant and not issue him with licence unreasonable and unlawful - Road Transport Act 1987, ss. 15(1), (4), 17(1)(d) - Federal Constitution, art. 13*

ROAD TRAFFIC: *Licence - Motor vehicle licence - Refusal to issue - Application for orders of certiorari and mandamus - Applicant blacklisted by respondents due to an outstanding summons - Whether decision to blacklist applicant and not issue him with licence unreasonable and unlawful - Road Transport Act 1987, ss. 15(1), (4), 17(1)(d) - Federal Constitution, art. 13*

This was an application by the applicant for an order of *certiorari* to quash the 1st respondent's decision refusing to issue a motor vehicle licence for a vehicle belonging to the applicant ('said vehicle'). The applicant also applied for an order of *mandamus* directing the 1st or 2nd respondent to issue a motor vehicle licence for the said vehicle to the applicant upon payment of the prescribed fee by him. The reason for the 1st respondent's refusal to issue the licence was that the applicant purportedly had an outstanding traffic police summons ('exh. L2') in respect of another vehicle. For this reason the applicant's name and identity card number appeared on the computer systems of the Road Transport

Department ('RTD') as a person with an outstanding summons; hence, the respondents blacklisted his name. The blacklisting was apparently automatic and the respondents never conducted an inquiry before blacklisting the applicant. The applicant was also not informed of the blacklisting, only learning about it when he went to the 2nd respondent to apply for and renew his motor vehicle licence for the said vehicle. The Federal Counsel submitted that the 2nd respondent had exercised his discretion lawfully and reasonably under s. 17(1)(d) of the Road Transport Act 1987 ('RTA') in blacklisting the applicant and refusing to issue a motor licence in respect of the said vehicle. The applicant, however, contended that the 2nd respondent's decision was unlawful and unreasonable. He argued that under s. 17(1)(d) of the RTA, the 2nd respondent had to be satisfied that there had been a contravention of or offence against the RTA or the Commercial Vehicles Licensing Board Act 1987 ('CVLBA') and to be so satisfied, the 2nd respondent must have evidence that the contravention or offence had been positively established or proven in a court of law.

Held (allowing the application; Deputy Registrar to assess damages suffered by applicant):

(1) The language in s. 17(1)(d) of the RTA should be given a strict and narrow interpretation to avoid injustice done to motorists in that the expression "outstanding matter or case with the RTD or the police relating to any contravention of or offence against the RTA or the CVLBA" should be confined only to a matter or case that has gone to court and in which the applicant had failed to appear to answer the charge on the offence or contravention for which the summons was issued, and also to a matter or case under investigation by the RTD or the police and pending the outcome of such investigation. In this case, there was no evidence that the 2nd respondent had satisfied himself that the applicant had been charged in a court of law for the offence stated in exh. L2 or whether the offence alleged had been proven in a court of law against the applicant. (paras 39 & 40)

(2) The exercise of discretion by the 2nd respondent not to issue the motor vehicle licence to the applicant in respect of the said vehicle had violated the principle of "Wednesbury unreasonableness". In public law, it is one of the well-

recognised grounds upon which a decision of a public decision-maker may be challenged in the courts. The recent trend of cases applying the "Wednesbury unreasonableness" principle in judicial review shows that it is not confined only to the examination of the process of decision-making but also to the merits of the decision. (para 44)

(3) On the facts, it was obvious on the face of exh. L2 that the offence which the applicant was said to have committed was an offence in the future. Whether the summons was wrongly dated as claimed by the respondents was a question of fact that could only be established after hearing all the evidence. On this fact alone, no reasonable man would blacklist the applicant because it was obvious that the summons could be challenged for this irregularity. (para 45)

(4) The blacklisting of the applicant was tantamount to compelling the applicant to admit to the alleged offence and pay the compound. This conclusion seemed to have the support of the Federal Counsel when she told the court that the purpose of s. 17(1)(d) of the RTA is to ensure that a person issued with a traffic summons pays the summons. Clearly, therefore, such purpose of the statutory provision would be an affront to the basic principle of criminal law that a person is presumed innocent until proven guilty. (para 47)

(5) Under s. 15(1) of the RTA usage of a motor vehicle on public roads requires a motor vehicle licence, and sub-s. (4) of the same section makes it an offence for using or permitting to be used a motor vehicle without a motor vehicle licence. Therefore, to deny a person a motor vehicle licence to which he is entitled upon complying with the requirements of the law is to deny the person the use and enjoyment of his motor vehicle. Such denial would also be in contravention of art. 13 of the Federal Constitution, under which a person cannot be deprived of his or her property except in accordance with the law. The meaning of deprivation in art. 13 should be interpreted liberally and broadly to include any act that would deprive a person of the use and enjoyment of his property. (paras 48, 49 & 50)

(6) Reading s. 17 of the RTA as a whole, it should be implied in s. 17(1)(d) that an applicant that has been blacklisted and refused a motor vehicle licence should also be notified of the blacklisting and refusal and be accorded an opportunity to make representation to the licensed registrar. This is pertinent because the blacklisting is done mechanically without any inquiry. It all depends on whether an applicant's name appears in the RTD's computer system as a person who has an outstanding matter or case with the RTD or police in relation to a contravention of or an offence against the RTA or CVLB. (para 55)

(7) Thus, the decision of the respondents to blacklist the applicant and not issue him with a licence for the said vehicle was not only unreasonable but also unlawful. (para 56)

Case(s) referred to:

Associated Provincial Picture Houses Ltd v. Wednesbury Corp [1948] 1 KB 223 ***(refd)***

Council of Civil Service Unions & Ors v. Minister for the Civil Service [1985] AC 374 ***(refd)***

Dato Menteri Othman Baginda & Anor. v. Dato Ombi Syed Alwi Syed Idrus [1981] 1 MLJ 29 ***(refd)***

Exxon Chemical (Malaysia) Sdn Bhd v. Menteri Sumber Manusia, Malaysia & Ors [2004] 1 CLJ 451 CA ***(refd)***

Goi Ching Ang v. PP [1999] 1 CLJ 829 FC ***(refd)***

Kumpulan Perangsang Selangor Bhd v. Zaid Hj Mohd Noh [1997] 2 CLJ 11 FC ***(refd)***

Minister of Labour & The Government of Malaysia v. Lie Seng Fatt [1990] 1 CLJ 1103; [1990] 1 CLJ (Rep) 195 SC ***(refd)***

National Union of Hotel, Bar and Restaurant Workers v. Minister of Labour and Manpower [1980] 2 MLJ 189 ***(refd)***

Ng Hee Thoong & Anor v. Public Bank Bhd [2000] 1 CLJ 503 CA ***(refd)***

SGS (Malaysia) Sdn Bhd v. YB Menteri Sumber Manusia & Anor [2001] 8 CLJ 675 HC ***(refd)***

Tenaga Pharmed Sdn Bhd v. Public Prosecutor & Other Applications [1994] 2 CLJ 858 HC ***(refd)***

Thompson v. Goold & Co [1910] AC 409 ***(refd)***

Legislation referred to:

Criminal Procedure Code, s. 47(b)

Industrial Relations Act 1967, s. 20(3)

Federal Constitution, art. 13

Road Transport Act 1987, ss. 3, 15(1), (4), 16(1), 17(1)(a), (b), (c), (d), (2), (5), (6)

Road Transport Rules 2003, s. 53(1)

Rules of the High Court 1980, O. 53

For the applicant - Chong Chieng Jen; M/s Chong Brothers Advocates
For the respondents - Munahyza Mustafa SFC

Reported by Suresh Nathan

JUDGMENT

Abdul Aziz Rahim J:

[1] The applicant applied for order of *certiorari* to quash the decision made by the 1st respondent on 22 October 2007 refusing to issue a motor vehicle licence for vehicle No. QKP1085 belonging to the applicant. The decision was communicated to the applicant *vide* the 1st respondent's letter dated 22 October 2007.

[2] The applicant also applied for *mandamus* order to direct the 1st respondent or the 2nd respondent to issue to the applicant upon payment of the prescribed fee by the applicant, a motor vehicle licence for the vehicle QKP1085.

[3] The applicant further claims for damages calculated at the rate of RM2,800 per month commencing from November 2007 till the month when the respondents issue the motor vehicle licence for the said vehicle.

[4] In his affidavit affirmed on 16 November 2007 the applicant deposed that he is the registered owner of the said vehicle QKP1085 as shown in exh. L1. He further deposed that sometime in December 2006 while he was driving another vehicle bearing registration No. KG2098Q, he was issued with notice or summons under s. 53(1) of the Road Transport Rules 2003 which charged him for carrying dangerous load on 5 December 2007. The notice is exh. L2.

[5] In his affidavit, the applicant denies committing the offence stated in the notice exh. L2. The applicant alleged that the notice was issued to him because he refused to bribe the policeman who had stopped him that day. The applicant also alleged in his affidavit that when he was stopped, the policeman merely asked him 'Apa macam sekarang?' and did not even mention about the load that the vehicle KG2098Q was carrying; and after a few minutes after the applicant did not make any offer of bribe, the policeman wrote him the summons.

[6] The applicant then wrote a letter exh. L3 dated 22 January 2007 to Ketua Polis Daerah Kota Samarahan requesting for the summons to be cancelled. In the letter, the applicant stated that the summons was in respect of future offence and should be cancelled and that if he did not hear from the Ketua Polis Daerah within seven days from the date of the letter exh. L3 he would deem that the summons had been cancelled.

[7] However, sometime in October 2007 the applicant went to apply for a motor vehicle licence for his vehicle No. QKP1085 at Jabatan Pengangkutan Jalan Kuching and he was informed that he was not allowed to pay for the motor vehicle licence and no licence would be issued for the vehicle QKP1085 because he has been blacklisted with unsettled summons in respect of the vehicle KG2098Q.

[8] The applicant then sought the help of his local Member of Parliament for Bandar Kuching who then wrote a letter exh. L4 dated 19 November 2007 to the 1st respondent demanding that the applicant be allowed to pay for the motor vehicle licence for his car QKP1085. However the 1st respondent responded by letter exh. L5 dated 22 October 2007 informing the applicant that he had to settle the summons first before he could allow to pay for, and be issued with, a motor vehicle licence for his car QKP1085.

[9] The applicant advanced three main grounds for this application. The first ground is that the respondents' refusal to issue the motor vehicle licence is unlawful and against the fundamental principle of law that a person is innocent until proven guilty. Secondly to compel the applicant into admitting guilty of the alleged offence and paying the compound without giving the applicant a hearing in the court of law is a breach of natural justice. Thirdly, the respondents were being irrational and unreasonable in relying on a notice of summons issued in respect of a future offence as a ground to disallow the applicant to pay the prescribed fee for the motor vehicle licence for the said vehicle and then to refuse to issue the motor vehicle licence applied for.

[10] The applicant contended that as a result of the wrongful act of the respondents, the applicant suffered loss in that the applicant was and still not able to use the said vehicle because its previous motor vehicle licence had expired on 24 September 2007.

[11] In her written submissions dated 22 September 2008, the Federal Counsel who appeared for the respondents submitted that the respondents had acted under s. 17(1)(d) of the Road Transport Act 1987 (Act 333) ("the RTA 1987") to refuse the issuance of the motor vehicle licence in respect of vehicle QKP1085 to the applicant.

[12] Section 17(1) of the RTA 1987 provides as follows:

> A licensed registrar shall not be required to grant any motor vehicle licence for which application is made unless:
>
> (a) the registration certificate relating to the motor vehicle specified in such application is produced and the particulars contained in such application are identical with the corresponding particulars contained in such registration certificate;
>
> (b) the identifying particulars of the motor vehicle, including the engine and chassis number, remain clear, distinct and untampered and are identical with the corresponding particulars contained in such registration certificate;
>
> (c) the prescribed fee has been paid; and
>
> (d) he is satisfied that the applicant has no outstanding matter or case with the Road Transport Department or the Police relating to any contravention of or offence against this Act or the Commercial Vehicles Licensing Board Act 1987.

[13] It was submitted that the licensed registrar is given discretionary power under s. 17(1) of the RTA 1987 whether or not to issue a motor vehicle licence and that such discretion has to be exercised by the licensed registrar in the spirit of the preamble of the Act itself which *inter alia* is to regulate motor vehicles and the use of motor vehicles on the roads for protection of third parties.

[14] The preamble of the RTA 1987 reads:

> An Act to make provision for the regulation of motor vehicles and of traffic on roads and other matters with respect to roads and vehicles thereon; to make provision for the protection of third parties against risks arising out of the use of motor vehicles; to make provision for the co-ordination and control of means of and facilities for transport; to make provision for the co-ordination and control of means of and facilities for construction and adaptation of motor vehicles; and to make provision for connected purposes.

[15] The Federal Counsel submitted that under para (d) of s. 17(1) of RTA 1987 the licensed registrar has to satisfy himself that the applicant has no outstanding matter or case with the Road Transport Department ("RTD") or with the police before he issues out the motor vehicle licence. It was further submitted that in this case the RTD's computer system showed that due to outstanding summons, exh. L2 issued to the applicant for a traffic offence purportedly committed by the applicant while in control of the motor lorry No. KG2098Q, and therefore the applicant's identity card No. 830430136235 was blacklisted. In such circumstances it was submitted that the licensed registrar is empowered under s. 17(1)(d) of the RTA 1987 to refuse to grant motor vehicle licence for vehicle Kenari No. QKP1085 owned by the applicant.

[16] The applicant in his affidavit had deposed that he was stopped by the policeman who issued him the summons exh. L2 in December 2006. No affidavit evidence was filed by the respondent to challenge this assertion. Therefore, it must be deemed or taken to be true: *Ng Hee Thoong & Anor v. Public Bank Berhad* [2000] 1 CLJ 503. Perusal of the traffic summons exh. L2 however clearly shows that the alleged commission of the offence is in the future. On the evidence, which is not challenged, exh. L2 was issued on 5 December 2007 for the offence allegedly committed by the applicant on 5 December 2007 that is a date in the future. And in the same traffic summons the applicant was asked to attend court on 1 February 2007 in the event the applicant refused to pay compound for the alleged offence at Cawangan Polis Trafik Kota Samarahan by 5 January 2007 which were dates even before the offence was alleged to have been committed.

[17] The Federal Counsel submitted that the summons exh. L2 is a valid summons despite the fact that it was dated 5 December 2007 instead of 5 December 2006. She further submitted that the applicant is not entitled in law to ignore the summons since all the facts with regard to the time and date of the issuing of the summons were within the personal knowledge of the applicant.

[18] It is the contention of the Federal Counsel that though the summons exh. L2 was wrongly dated it was legally issued according to the Road Transport (Compounding of Offences) Rules 2003 – P.U. (A) 103/2003 by a police personnel who was

empowered under the law to do so. She submitted that except for the dates, all other particulars pertaining to the applicant in the summons exh. L2 were clearly and correctly stated and within personal knowledge of the applicant. Therefore she submitted the applicant was not prejudiced; and that if the applicant had wanted to challenge the validity of the traffic summons the applicant ought to appear in Kota Samarahan Magistrate's Court on the date specified in the summons. The applicant, she said, simply could not ignore the summons.

[19] This contention by the Federal Counsel that the summons exh. L2 was wrongly dated implies that the Federal Counsel could read the mind of the police personnel who had issued the summons that he or she had unwittingly and without deliberation dated the summons exh. L2 as 5 December 2007. There is no affidavit evidence by the police personnel who issued the summons exh. L2 to confirm or substantiate the contention by the Federal Counsel. In my view such evidence is necessary to show that the alleged wrong date on the summons was a *bona fide* mistake by the said police personnel.

[20] And to say that the applicant had ignored the summons exh. L2 is not entirely correct. The applicant had deposed in his affidavit that he did write the letter exh. L3 to the Ketua Polis Daerah Kota Samarahan pointing out to the irregularity in the summons and requested the summons be cancelled.

[21] The Federal Counsel submitted that the licensed registrar ie the 2nd respondent had exercised his discretion lawfully and reasonably under s. 17(1)(d) of the RTA 1987 in blacklisting the applicant and refusing to issue a motor licence in respect of the applicant's vehicle QKP1085, which is not the subject matter of the summons exh. L2. She cited several authorities (*Minister of Labour & The Government of Malaysia v. Lie Seng Fatt* [1990] 1 CLJ 1103; [1990] 1 CLJ (Rep) 195; *National Union of Hotel, Bar and Restaurant Workers v. Minister of Labour and Manpower* [1980] 2 MLJ 189; *Exxon Chemical (Malaysia) Sdn Bhd v. Menteri Sumber Manusia, Malaysia & Ors* [2004] 1 CLJ 451 and *SGS (Malaysia) Sdn Bhd v. YB Menteri Sumber Manusia & Anor* [2001] 8 CLJ 675) to persuade the court not to disturb the exercise of the discretion by the 2nd respondent in this instant case.

[22] The authorities cited by the Federal Counsel are cases that dealt with the power of the Minister under s. 20 of the Industrial Relations Act 1967 to refer to any industrial disputes to the Industrial Court. In those cases the court held that under that section, the Minister has wide discretion whether or not to refer a dispute to the Industrial Court and that the exercise of that discretion is not amenable to judicial review if the Minister had acted *bona fide*; that is without any improper motive and had not taken into account extraneous or irrelevant matters. The cases also show that the exercise of discretion by the Minister is unassailable if he had acted in a way not to frustrate the object of the Act under which the discretion is exercised. It was held in one of those cases that the test for the Minister's satisfaction under s. 20(3) of the Industrial Relations Act 1967 is a subjective one and that the courts should resist any temptation to convert its jurisdiction to review into a reconsideration of the merits as if the case is before the court on appeal. This is because the exercise of the discretion is vested with the Minister under the Act and not in the courts.

[23] Hence, the Federal Counsel submitted the principles laid down in those cases cited by her are applicable in the instant case. I have no doubt about that. Furthermore, the authorities cited are decisions by the Federal Court, which is the apex court, and are binding on me. However a careful reading of those decisions will show that the discretion that is exercised is not unfettered. The court may interfere with the exercise of the discretion if the decision maker had acted with improper motive or has misdirected himself in law or had taken into account irrelevant matter or had not taken into consideration relevant matters or that his decision militates against the object of the statue.

[24] Applying the principles in the cases she cited, the Federal Counsel submitted that the discretion in this case is vested in the 2nd respondent; and the court should not convert the review into a reconsideration of merits as if the case is on appeal. In this case the 2nd respondent had satisfied himself that the applicant has an outstanding summons with the police and that his exercise of discretion had not militated against the policy and objectives of the RTA 1987. Therefore the 2nd respondent's exercise of the discretion is not wrong or unlawful or unreasonable. She also submitted that there is no evidence that the 2nd respondent had taken into consideration extraneous matters or irrelevant matters.

[25] For the applicant it was contended that the decision by the 2nd respondent not to allow the applicant to pay for, and to be issued with, a motor vehicle license in respect of motor vehicle No. QKP1085 is unlawful and unreasonable. Learned counsel for the applicant argued that under s. 17(1)(d) of the RTA 1987, the 2nd respondent has to be satisfied that the applicant "has no outstanding matter or case with the Road Transport Department or the Police relating to any contravention of or offence against" the Act ie RTA 1987 or the Commercial Vehicles Licensing Board Act 1987 ("the CVLB Act 1987"). He further argued that the meaning of the expression 'relating to any contravention of or offence against' in the section is different from the meaning of the word 'summons' that was issued to the applicant. He submitted that a 'summons' is only an allegation made against a person that he has committed an offence. Citing a Federal Court's decision in *Goi Ching Ang v. Public Prosecutor* [1999] 1 CLJ 829 learned counsel for the applicant submitted that a person who is alleged to have committed an offence is innocent until proven guilty. That is the cardinal principle of criminal law that a person is presumed innocent until the offence alleged is proven against him and his guilt is established.

[26] It was argued for the applicant that under s. 17(1)(d) of the RTA 1987, the 2nd respondent has to be satisfied that there has been contravention of or offence against the Act or the CVLB Act 1987 and to be so satisfied, the 2nd respondent must have evidence that the contravention or offence has been positively established or proven in a court of law.

[27] A decision by a public body or public official made pursuant to any provision of a statute which entrusted the power of decision making on the public body or official, and this includes the exercise of any discretion vested in such public body or official, may be challenged under a judicial review of that decision by a superior court of law.

[28] The grounds on which such decision may be challenged are too well known and do not require any citation of authorities to establish them. They may be briefly stated as follows: the decision may be challenged if it is made in breach of the principle of the *audi alteram partem* rule; or if it is made in excess of jurisdiction or the power given to the decision maker; or if it is made *mala fide*;

A or if it is tainted with illegality; or if the decision is irrational within the meaning of Lord Diplock's 'irrationality' in *Council of Civil Service Unions & Ors v. Minister for the Civil Service* [1985] AC 374 and falls within the principle of 'Wednesbury unreasonableness' as decided in *Associated Provincial Picture Houses Ltd v. Wednesbury* B *Corp* [1948] 1 KB 223, and if it can be shown that there is procedural impropriety in arriving at the impugned decision.

[29] In this case the applicant has challenged the decision by the licensed registrar, the 2nd respondent, for refusing to allow the C applicant to pay for the motor vehicle licence for motor vehicle QKP1085 belonging to the applicant and for refusing to issue the motor vehicle licence in respect of the said motor vehicle. The reason for this refusal is that the applicant is purportedly had an outstanding traffic police summons – exh. L2 – in respect of D another vehicle KG2098Q. For this reason the applicant's name and identity card no. appeared on the RTD's computer system as a person with an outstanding summons and therefore his name is blacklisted by the respondents. Apparently the blacklisting is automatic. There was never an inquiry conducted by the 1st or E 2nd respondent before blacklisting the applicant. The applicant was also not informed of the blacklisting. The applicant only learnt about it when he went to the 2nd respondent to apply for and renew his motor vehicle licence for his other car QKP1085.

F **[30]** On the face of the summons exh. L2 it is obvious that there are irregularities. The applicant said in his affidavit that he was stopped and issued with the summons in December 2006. But in the summons exh. L2 the offence was allegedly committed by the applicant on 5 December 2007, that is one year after the G summons was issued! In other words the summons was issued to the applicant for an offence in the future. In the summons also the applicant was offered two choices. That is, either the applicant pays the compound to the offence at Kota Samarahan Police station on 5 January 2007 or appears in court on H 1 February 2007 to answer the charge in the summons. I have no reason to doubt the applicant's claim that he was stopped in December 2006. By looking at the dates on the summons – exh. L2 – it is obvious that the applicant was asked to appear in court on 1 February 2007 or to pay the compound on or before I 5 January 2007. These two dates were dates before, and much earlier, than the date of issue of the summons. Is that possible?

[31] In blacklisting the applicant and refusing to issue him with the motor vehicle licence, the 1st and 2nd respondents never addressed these irregularities on the summons exh. L2.

[32] The 2nd respondent is said to have acted under s. 17(1)(d) of the RTA 1987 to blacklist the applicant and to refuse the motor vehicle licence. Under the said provision the 2nd respondent may do so if he is satisfied that the applicant has 'outstanding matter or case with the Road Transport Department or the Police relating to any contravention of or offence against' the RTA 1987 or the CVLB Act 1987.

[33] It would seem that the 'matter or case with the Road Transport Department or the police relating to any contravention of or offence' refers to a pending matter or case before the CVLB or the police that awaits their action or decision on the matter or to be acted upon by the person who was issued with summons in this case, such as paying the compound or appears in court to answer the complaint in the summons. In this respect does the summons issued to the applicant in this instant case come within the meaning of such a 'matter or case'? I do not think so.

[34] As can be seen from exh. L2 the summons is actually a written complaint that the applicant has allegedly committed an offence against the RTA 1987 or the Rules made thereunder. The summons gives the applicant two choices. First if he admitted to the complaint he may wish to pay the compound offered by the date stipulated in the summons; and will be the end of the matter. Secondly, if he denies the complaint and decides to challenge it, he may appear in court to answer the complaint in the summons. If he did either one of the choices, I do not think the summons is a matter or case pending and relating to the contravention of the RTA 1987 or the CVLB Act 1987.

[35] However, the court will take judicial notice that on the day a person is to appear before a court of law on a traffic police summons or any other traffic summons issued by any other authorities empowered to do so, the prosecution will have the offence alleged in the summons framed as a charge against the person. And when the person appears in court he would be asked to plead to the charge. If the person does not appear in court on the date specified in the summons then the prosecution may apply under s. 47(b) of the Criminal Procedure Code ("the CPC') for a

warrant of arrest to be issued against the person so that the person can be brought before the court on the date stated in the warrant of arrest. Only at that point of time I think the subject matter of the summons becomes a 'matter or case' with the RTD or the police relating to any contravention of or offence under the RTA 1987 or the CVLB Act 1987. Therefore in my view only at that point of time the respondents may exercise the discretion under s. 17(1)(d) of the RTA 1987 if the person still does not appear in court to answer the charge or the summons.

[36] However, if the person appears in court and claims trial to the charge in respect of the offence specified in the summons and the trial is fixed at sometime in the near future, technically it is an outstanding matter or case with the RTD or the police, as the case may be, relating to the contravention of or offence against the RTA 1987 or CVLB Act 1987. This has to be so because the final outcome of the matter would not be known until the court has decided on the matter. But I do not think that in such circumstance it would be right for the respondents to exercise the discretion under s. 17(1)(d) of the RTA 1987 to blacklist the person that has applied for a motor vehicle licence and to refuse him the licence. The reason is that the matter or case is outstanding not because it is intentional on the part of the applicant to refuse to deal with the summons issued to him but because the matter or case has yet to be dealt with by the court or such other proper authority.

[37] In another scenario, a matter or case could be outstanding because it is still under investigation by the RTD or the CVLB for complaints of alleged breach or contravention of the provisions of RTA or CVLB Act 1987. This could be particularly true of contravention of CVLB Act 1987.

[38] If the respondents exercised their discretion in the circumstances mentioned above to blacklist the applicant and to refuse to issue to the applicant a motor vehicle licence, it would be in my opinion amount to an act to coerce the applicant to admit to the alleged offence without giving him the opportunity to explain or defend himself. This is because a person is presumed innocent until proven guilty. Technically however, and on literal reading of the provision of s. 17(1)(d) RTA 1987 it would be possible to do so. But I think that is not the intention of the legislature.

[39] Therefore in my opinion, the language in s. 17(1)(d) RTA 1987 should be given a strict and narrow interpretation to avoid injustice done to motorists in that the expression 'outstanding matter or case with the Road Transport Department or Police relating contravention of or offence against this Act or the Commercial Vehicles Licensing Board Act 1987' confines only to a matter or case that has gone to court and which the applicant had failed to appear to answer the charge on the offence or contravention for which the summons was issued and also to a matter or case under investigation by the RTD or the police and pending the outcome of such investigation. I am aware that there are authorities that say that in interpretating a statutory provision one cannot read into it words or expressions which are not there except on the ground of necessity. However, in this instant case, I think it is of necessity to read s. 17(1)(d) of the RTA 1987 in the manner I stated above. See *Thompson v. Goold & Co.* [1910] AC 409; 420 cited in *Tenaga Pharmed Sdn. Bhd. v. Public Prosecutor & Other Applications* [1994] 2 CLJ 858, 862.

[40] In this case there is no evidence that the 2nd respondent had satisfied himself that the applicant had been charged in a court of law for the offence stated in the summons exh. L2 or whether the offence alleged had been proven in the court of law against the applicant. In fact speaking from the Bar and in answer to a question by the court, the Federal Counsel conceded that she did not know whether the case against the accused was mentioned in court on 1 February 2007 and whether the applicant attended court that day.

[41] The Federal Counsel told the court, again from the Bar, and repeated in her written submissions, that the 2nd respondent had decided to blacklist the applicant when his name appeared on the RTD's computer system as having an outstanding traffic police summons which is yet unsettled. In other words, the 2nd respondent had not applied his mind to the material facts and evidence of the case when he decided to refuse to issue the motor vehicle licence to the applicant. He merely relied on the computer records without actually looking at the summons exh. L2 to satisfy itself of its regularity or validity. There is also no evidence that he had checked or verified with the police on the summons. In other words, the 2nd respondent did not conduct any inquiry to determine the veracity of the summons to satisfy himself under s. 17(1)(d) of the RTA 1987.

[42] What is pertinent to note is that when questioned by the court, the Federal Counsel told the court that the Traffic Police Department's computer is linked to the RTD's computer. That means whenever the traffic police keyed in information on summons issued to traffic offenders the same information will appear on the RTD's computer. But the RTD would not be able to monitor the progress or development on the summons such as whether the person who has been issued with the summons has appeared in court to answer the summons and whether he had pleaded guilty to offence in the summons or had claimed trial to it. All these informations are with the police. It will not be accessible to the RTD through its computer system unless the police keyed in the information into theirs.

[43] Another pertinent point to observe is that the summons exh. L2 was issued to the applicant in respect of motor vehicle KG2098Q. But the vehicle which the 2nd respondent refused to accept payment for the motor vehicle licence and refused to issue the motor vehicle licence is a different vehicle altogether and it bears a registration No. QKP1085. This vehicle has nothing to do with the summons in exh. L2.

[44] On the facts and circumstances of this case as stated above, I think the exercise of the discretion by the 2nd respondent not to issue the motor vehicle licence to the applicant in respect of motor vehicle No. QKP1085 has violated the principle of 'Wednesbury unreasonableness'. In public law, it is one of the well recognized grounds upon which the decision of a public decision maker may be challenged in courts. Recent trend of cases applying the 'Wednesbury unreasonableness' principle in judicial review shows that it is not confined only to examination of the process of the decision making but also to the merit of the decision. In *Kumpulan Perangsang Selangor Bhd v. Zaid Hj Mohd Noh* [1997] 2 CLJ 11 SC, the learned Justice Gopal Sri Ram JCA in delivering the judgment of the court said at pp. 24-25:

> In our judgment, the correct approach to the 'Wednesbury unreasonableness' and the proportionality tests is that adopted by Lord Denning MR in the Court of Appeal in *Evans*. We therefore find the criticism of his approach by the House to be unwarranted. The continued reluctance of English courts to come to grips with the practical realities of applying the 'Wednesbury unreasonableness' test (see, for example, *R v. Secretary of State for*

the Home Department, ex p Brind [1991] 1 AC 696) in no way deters us from accepting as correct the view expressed by Edgar Joseph Jr FCJ in *Rama Chandran*. An examination of the merits of a decision followed by a result that no reasonable person or body similarly circumstanced could have come to the conclusion in question and a making of the decision that ought to have been made in the first place, does not, in our view, occasion an abuse of judicial power by an unjustified or unauthorized assumption of appellate power in *certiorari* proceedings.

[45] In this instant case it is obvious on the face of the summons exh. L2 that offence with which the applicant is said to have committed is an offence in the future. Whether the summons was wrongly dated as claimed by the respondents is a question of fact which can only be established after hearing all the evidence. On this fact alone I think no reasonable man would blacklist the applicant because it is obvious that the summons is opened to challenge for this irregularity.

[46] In the summons exh. L2 the applicant was asked to appear in court on 1 February 2007 if he did not pay the offer of compound by the stipulated date in the summons. However there is no evidence to show that the summons was mentioned in court on 1 February 2007 and whether the applicant appeared in court that day to answer the summons. And under the CPC if a person being summoned to appear in court, does not appear, the prosecution may apply for warrant for his arrest under s. 47(b) of the CPC. But in this case no evidence was shown that a warrant of arrest was applied for against the applicant. When the Federal Counsel was questioned by the court on this, her replied was that she did not know. It would appear that the 2nd respondent is not concerned with all these facts before he decided not to issue the motor vehicle licence.

[47] In this regard I accept the submissions by learned counsel for the applicant that the blacklisting of the applicant is tantamount to compelling the applicant to admit to the alleged offence and pay the compound for the offence. This conclusion seems to have the support of the Federal Counsel when she told the court from the bar that the purpose of s. 17(1)(d) of the RTA 1987 is to ensure that a person who is issued with a traffic summons pays the summons. Clearly therefore such purpose of the statutory provision would be affront to the basic principle of criminal law that a person is presumed innocent until proven guilty.

[48] Under s. 15(1) RTA 1987 a usage of a motor vehicle on public roads requires a motor vehicle licence. The section reads:

> No person shall use or cause or permit to be used a motor vehicle in respect of which there is not in force a motor vehicle licence granted under this Act.

[49] And subsection (4) of the same section makes it an offence for using or permitting to use a motor vehicle without a motor vehicle licence. It reads:

> Any person who uses or causes or permits to be used a motor vehicle after declaring that it has been laid up shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit.

[50] Therefore to deny a person a motor vehicle licence to which he is entitled upon complying with the requirement of the law is to deny the person the use and enjoyment of his motor vehicle. Such denial would also in my view, be, in contravention of art. 13 of the Federal Constitution. Under the article a person cannot be deprived of his or his property except in accordance with the law. The meaning of deprivation in art. 13 of the Constitution should be interpreted liberally and broadly to include any act that would deprive a person the use and enjoyment of his property.

[51] In *Dato Menteri Othman bin Baginda & Anor. v. Dato Ombi Syed Alwi bin Syed Idrus* [1981] 1 MLJ 29, Raja Azlan Shah Ag. LP (as His Highness then was) said at p. 32:

> In interpreting a constitution two points must be borne in mind. First, judicial precedent plays a lesser part than is normal in matters of ordinary statutory interpretation. Secondly, a constitution, being a living piece of legislation, its provisions must be construed broadly and not in a pedantic way – "with less rigidity and more generosity than other Acts" (see *Minister of Home Affairs v. Fisher* [1973] 3 All ER 21. A constitution is *sui generis*, calling for its own principles of interpretation, suitable to its character, but without necessarily accepting the ordinary rules and presumptions of statutory interpretation. As stated in the judgment of Lord Wilberforce in that case: "A constitution is a legal instrument given rise, amongst other things, to individual rights capable of enforcement in a court of law. Respect must be paid to the language which has been used and to the traditions and usages which have given meaning to that language. It is quite consistent with this, and with the recognition that rules of

> interpretation may apply, to take as a point of departure for the process of interpretation a recognition of the character and origin of the instrument, and to be guided by the principle of giving full recognition and effect to those fundamental rights and freedoms." The principle of interpreting constitutions "with less rigidity and more generosity" was again applied by the Privy Council in *Attorney-General of St. Christopher, Nevis and Anguilla v. Reynolds* [1979] 3 All ER 129, 136.
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> It is in the light of this kind of ambulatory approach that we must construe our Constitution.

[52] Under the practice of criminal law, a person who is issued with a traffic summons has a right to challenge the summons in a hearing before a court of law. By blacklisting him and thereby refusing to issue him with a motor vehicle licence without giving the person an opportunity to challenge the summons is to deprive the person the usage of the motor vehicle, which is his property, not in accordance with the law. That is unconstitutional.

[53] It is also to be observed that in this instant case no notice was given to the applicant that he is being blacklisted because he has an outstanding traffic police summons. The applicant learned about the blacklisting only when he went to the RTD to renew his road tax for the vehicle No.QKP1085. So the process of decision making to blacklist the applicant is also wanting. The 2nd respondent had blacklisted the applicant without giving him the right to be heard. The 2nd respondent should have been aware that in modern living the usage of a motor vehicle as main mode of transportation for all sort of purposes is essential and of extreme necessity. Thus to deprive a person of his necessity in his daily life is a serious matter that entitles the person likely to be affected by that deprivation the right to be heard.

[54] At this point I would digress a little and make some general observations on s. 17 RTA 1987. It seems that there are two authorities under that section that could grant or refuse a motor vehicle licence. The first authority is the licensed registrar under s. 17(1). The second authority is the Director of Road Transport appointed under s. 3 of the RTA and exercising the power under s. 17(2). However under s. 16(1) of the RTA the application is made only to the licensed registrar.

[55] Under subsection (5) of s. 17 RTA, if the Director of Road Transport refused to grant a motor vehicle licence, he must notify the Director-General stating the ground for such refusal; and the Director-General shall inform the registered owner of the motor vehicle of such refusal within fourteen days of the refusal. Upon being notified as such by the Director-General, the person affected or aggrieved by the refusal may appeal to the Minister under subsection (6) of the same section. But no such relief is afforded to an applicant who is refused a motor vehicle licence by the licensed registrar under s. 17(1). There appears to be no good reason for this discrimination against applicants for motor vehicle licences. In my view, reading s. 17 of the RTA 1987 as a whole, it should be implied in s. 17(1)(d) that an applicant that has been blacklisted and refused a motor vehicle licence should also be notified of the blacklisting and refusal and be accorded an opportunity to make representation to the licensed registrar. This is pertinent because the blacklisting is done mechanically without any inquiry. It all depends on whether an applicant's name appears in the RTD's computer system as a person who has outstanding matter or case with the RTD or police in relation to a contravention of or offence under the RTA 1987 or CVLB Act 1987.

[56] On the foregoing, I find that the decision of the respondents to blacklist the applicant and not to issue him with motor vehicle licence for motor vehicle QKP1085 not only unreasonable but also unlawful.

[57] As to the claim for damages, the amended provision of O. 53 of the Rules of the High Court 1980 ("the RHC 1980") allows the applicant to claim damages in judicial review. In this case the applicant has shown that because of the respondents' decision in blacklisting him and refusing to issue him with a motor vehicle licence he had to find alternative means of transport by renting another vehicle. However the amount the applicant claimed is, I think quite excessive. The applicant's vehicle that was refused the motor vehicle licence is only a 'Kenari', a small medium car. But the applicant had rented a 'Honda Accord', a much bigger car, as his alternative transport. I think the applicant should not be allowed to benefit from the fault of the 2nd respondent more than it is necessary to compensate the applicant for inconvenience caused by the decision. In this instant case the applicant has not shown he suffered any loss other than the inconvenience of not

being able to use his motor vehicle QKP1085 for his daily use. Therefore, I think the amount of compensation in damages should be reasonable and for this purpose I will direct that the damages be assessed by the deputy registrar by taking into consideration the evidence adduced in the affidavits at the hearing of this judicial review and also any other evidence as to the average rental of a 'Kenari' prevailing in the market at the relevant time or period.

[58] On the above reasonings, I will allow the applicant's application and quashed the decision of the 2nd respondent for blacklisting the applicant and refusing to issue the motor vehicle licence with costs to the applicant.

[59] I will also direct the respondents to issue to the applicant a motor vehicle licence in respect of motor vehicle No. QKP1085 upon the applicant paying the prescribed fee and complying with the requirement of ss. 16 and 17(1)(a), (b) and (c) of the RTA 1987, wherever relevant.

[60] Further, I will direct that the deputy registrar to assess the damages suffered by the applicant on the basis of hiring or renting a 'Kenari' or such other motor vehicle in the same category for the period the applicant is deprived of the use of his motor vehicle QKP 1085 up to date of this judgment or the date the motor vehicle licence is issued to the applicant, whichever is earlier.